

June 30, 2016

**VIA ELECTRONIC DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TWA325  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentations  
CG Docket No. 02-278**

Dear Ms. Dortch:

On June 28, 2016, the following individuals met with David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Clyburn, and separately with Amy Bender, Legal Advisor to Commissioner O'Rielly, on behalf of Navient Corp. ("Navient"): Sarah Ducich, Senior Vice President of Government Relations and Public Policy, Navient; Lucia Lebens, Vice President of Government Relations and Public Policy, Navient; Joel Mayer, Managing Director and Associate General Counsel, Navient; and Mark W. Brennan and Wesley B. Platt of Hogan Lovells US LLP, counsel to Navient. At both meetings, we discussed the Commission's proposals for implementing Section 301 of the Bipartisan Budget Act of 2015,<sup>1</sup> which exempts calls to wireless numbers that are made "solely to collect a debt owed to or guaranteed by the United States" from the Telephone Consumer Protection Act's ("TCPA") technology-based "prior express consent" requirement.<sup>2</sup>

During the meetings, we explained that commenters almost universally agree on several key issues.<sup>3</sup> For example, nearly all commenters support the NPRM's proposal to interpret the exemption to cover debt servicing calls.<sup>4</sup> Such calls are critical to keeping student loan borrowers on

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<sup>1</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, 31 FCC Rcd 5134 (2016) ("NPRM"); Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(2)(H), 129 Stat. 584 (2015).

<sup>2</sup> See 47 U.S.C. § 227(b)(1).

<sup>3</sup> All of the comments and reply comments referenced in this letter were filed in CG Docket No. 02-278 in June 2016.

<sup>4</sup> See NPRM ¶¶ 8-10; see also, e.g., Nat'l Council of Higher Educ. Resources ("NCHER") Comments at 4-5; Educ. Credit Management Corp. Comments at 3-5; Credit Union Ass'n of the Dakotas Comments at 3.

track and aware of their repayment options.<sup>5</sup> Often, they are a vital pathway for providing information to an at-risk or struggling borrower.<sup>6</sup>

The vast majority of commenters also agree that the exemption should cover calls prior to delinquency. State agencies,<sup>7</sup> nonprofit organizations,<sup>8</sup> education associations,<sup>9</sup> and student loan servicers<sup>10</sup> all agree that the exemption properly includes such calls. The exemption applies based on the purpose of the calls, not the level of delinquency, as many commenters emphasize.<sup>11</sup> Moreover, such calls can be instrumental in helping student loan borrowers avoid delinquency – as highlighted by the Department of Education’s (“Department”) rules and requirements for student loan servicers and the Interagency Task Force’s recommendations to President Obama last year.<sup>12</sup> The National Consumer Law Center (“NCLC”), *et al.* also note that they have “been persuaded” since the NPRM’s release that the exemption should cover certain pre-delinquency calls.<sup>13</sup>

Likewise, many commenters agree that the exemption should cover calls to numbers other than those provided by borrowers, as reflected by the comments of the Association of Community College Trustees,<sup>14</sup> the National Association of College and University Business Officers,<sup>15</sup> ACA International,<sup>16</sup> NCLC,<sup>17</sup> and the Student Loan Servicing Alliance.<sup>18</sup> Such calls are made “solely to collect” a federal debt. Additionally, they are often a critical tool for locating federal student loan borrowers.<sup>19</sup> In fact, the Department’s rules even require such calls in some cases.<sup>20</sup>

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<sup>5</sup> See *id.*

<sup>6</sup> See Educ. Finance Council Comments at 1.

<sup>7</sup> See, e.g., Utah Higher Educ. Reply Comments at 1.

<sup>8</sup> See, e.g., United Negro College Fund (“UNCF”) Comments at 2 (“[W]e recommend that the [FCC] permit the use of auto dialer technology to be used by loan servicers to contact borrowers to advise them of their repayment options, even if their loans are in good repayment status.”); Vermont Student Assistance Corp. Reply Comments at 1.

<sup>9</sup> See, e.g., Am. Ass’n of Community Colleges Comments at 2.

<sup>10</sup> See, e.g., Navient Comments at 30-35; Continental Service Group d/b/a ConServe Comments at 4-5 (“ConServe Comments”).

<sup>11</sup> See, e.g., Navient Comments at vi, 37, 40; ConServe Comments at 5-6.

<sup>12</sup> See, e.g., Navient Comments at 31-32; 34 C.F.R. § 682.411; U.S. Dep’t of Educ., *Recommendations on Best Practices in Performance-Based Contracting* at 10 (2015), <https://www2.ed.gov/finaid/loans/repay/best-practices-recommendations.pdf>.

<sup>13</sup> See NCLC Reply Comments at 6-7.

<sup>14</sup> See Ass’n of Community College Trustees Reply Comments at 4.

<sup>15</sup> See Nat’l Ass’n of College and University Business Officers Reply Comments at 4.

<sup>16</sup> See ACA Int’l Comments at 11.

<sup>17</sup> See NCLC Reply Comments at 9.

<sup>18</sup> See Student Loan Servicing Alliance Comments at 20.

<sup>19</sup> See, e.g., Navient Reply Comments at 23.

<sup>20</sup> See 34 C.F.R. § 682.411(h), (m).

At the meetings, we also discussed the ample evidence in the record that the NPRM's proposal to limit the number of calls allowed to three per month is unduly restrictive and conflicts with many other regulatory requirements. As many commenters point out, the Department and other federal agencies require calling borrowers more than three times per month in some instances.<sup>21</sup> Attached as Appendix A to this letter is an overview of federal and state government regulations that require calls to borrowers that have been cited by commenters in this proceeding. In light of these requirements, we agree with the Consumer Financial Protection Bureau that a "careful assessment" is needed to determine an optimal limit on the number of calls allowed under the exemption.

In addition, we explained that the record demonstrates that student loan servicers are far more likely to reach low-income and minority federal student loan borrowers – who are at a greater risk of default – on a wireless phone. As the American Association of Community Colleges explains, "[d]espite the relatively low borrowing rate (19%) compared to their four-year college counterparts, community college students struggle with persistently high default rates."<sup>22</sup> The United Negro College Fund ("UNCF") echoes these sentiments. UNCF explains that "[b]ecause African Americans have fewer financial resources, they borrow at higher rates, and in greater amounts, than White Americans to attend colleges."<sup>23</sup> UNCF also notes that "[t]oo many federal student loan borrowers are hampered in paying their loan debt because they must navigate a confusing array of [r]epayment options that they do not understand or they simply are not aware of."<sup>24</sup>

Although low-income and minority student loan borrowers often stand to benefit most from conversations with their servicers, reaching them other than by wireless phones can prove challenging. For example, such borrowers are disproportionately wireless-only.<sup>25</sup> They also move more frequently and tend to change telephone numbers more often.<sup>26</sup> Congress' exemption is thus pivotal to helping the most at risk borrowers, including minority and low-income students – a fact that is borne out by real-world experiences with enhanced outreach to these borrowers. Historically Black Colleges and Universities, for example, have been able to reduce their student default rates through innovative outreach techniques and best practices, including increased contact with borrowers.<sup>27</sup>

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<sup>21</sup> See, e.g., Am. Bankers Ass'n and Consumer Bankers Ass'n Comments at 11; Consumer Mortgage Coalition Comments at 5-10.

<sup>22</sup> Am. Ass'n of Community Colleges Comments at 1 (describing student loan debt as a "serious problem for African Americans").

<sup>23</sup> UNCF Comments at 1.

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., Navient Comments at 24; Center for Disease Control, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2015* (May 2016) (noting that nearly 60 percent of adults living in poverty live in wireless-only households, and that Hispanic adults (59.2%) and non-Hispanic black adults (48.1%) are more likely than non-Hispanic white adults (43.2%) to live in wireless-only households).

<sup>26</sup> See Peter J. Mateyka, *Desire to Move and Residential Mobility: 2010-2011*, U.S. Census Bureau at 7 (2015), <http://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-140.pdf>; U.S. Dep't of Educ., *Strengthening the Student Loan System to Better Protect All Borrowers* at 16 (2015), <https://www2.ed.gov/documents/press-releases/strengthening-student-loan-system.pdf>.

<sup>27</sup> See U.S. Dep't of Educ., *Historically Black Colleges and Universities Fact Sheet: FY 2012 3-Year Cohort Default Rates* (2015), <http://www2.ed.gov/offices/OSFAP/defaultmanagement/dmd002.html>.

Finally, we reiterated at the meetings the critical role that telephone conversations play in helping student loan borrowers resolve delinquencies and avoid default. The federal student loan landscape is far more complex now than it was 25 years ago, and many distressed borrowers are not fully aware of their numerous options. There are now 16 different repayment plan options – including some that allow payments to be based on income and as low as \$0/month – and 32 forbearance and forgiveness options.<sup>28</sup>

Navient is able to help borrowers resolve their delinquencies and prevent default **more than 90 percent of the time** when it has a live conversation with them.<sup>29</sup> Conversely, 90 percent of the borrowers who default on their federal student loans have never had a live conversation with Navient, despite our efforts to reach them.<sup>30</sup> Similarly, Navient's recent test found that outreach to previously delinquent borrowers' cell phones **increased successful IDR plan enrollment by 50 percent**.<sup>31</sup> We encourage the Commission to carefully and thoughtfully consider this data and other extensive data in the record, the broad agreement among many parties regarding the benefits of these calls, federal student loan borrowers' interests, and Congress' clear intent as it adopts rules in this proceeding.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

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<sup>28</sup> See Navient Comments at 6.

<sup>29</sup> See *id.* at 9-10.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.* at 34.

**Appendix A**  
**Government Regulations that Require Calls to Borrowers**  
**CG Docket No. 02-278<sup>1</sup>**

<b>Government Entity</b>	<b>Calls Required</b>	<b>Source</b>	<b>Referenced By</b>
Department of Education	<p>Minimum: four calls in 21 days (certain IDR plan applicants).</p> <p>At least four “diligent efforts” to contact delinquent FFELP borrowers by telephone.</p> <p>Urged Congress to allow services to contact student loan borrowers on their cell phones.</p>	<p>FSA Business Operations Change Request Form 3571.</p> <p>34 C.F.R. § 682.411.</p> <p>Strengthening the Student Loan System to Better Protect All Borrowers at 16.</p>	<p>Navient Comments at 46.</p> <p>Nelnet Reply Comments at 5.</p> <p>ABA/CBA Comments at 11, 18.</p>
Fannie Mae and Freddie Mac	Minimum: one call every five days.	<p>Fannie Mae Servicing Guide at D-2-02.</p> <p>Freddie Mac Servicing Guide.</p>	<p>ABA/CBA Comments at 11, 17.</p> <p>Consumer Mortgage Coalition Comments at 8-10.</p> <p>Mortgage Bankers Assn. Reply Comments at 9.</p>
Federal Housing Administration (FHA)	Minimum: two calls per week.	FHA Single Family Housing Policy Handbook at 578-79.	<p>ABA/CBA Comments at 11, 15.</p> <p>Consumer Mortgage Coalition Comments at 6.</p> <p>Mortgage Bankers Assn. Reply Comments at 9.</p>
Home Affordable Modification Program (HAMP)	Minimum: four calls per 30 days.	MHA Handbook v. 5.1 at 76.	<p>ABA/CBA Comments at 11, 16.</p> <p>Consumer Mortgage Coalition Comments at 5.</p> <p>Mortgage Bankers Assn. reply Comments at 9.</p>

<sup>1</sup> All of the filings cited herein were submitted in response to the Notice of Proposed Rulemaking released by the Commission on May 6, 2016. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Notice of Proposed Rulemaking, 31 FCC Rcd 5134 (2016).

National Mortgage Settlement	Minimum: four calls per 30 days.	National Mortgage Settlement at A-23.	ABA/CBA Comments at 11, 17.
Consumer and Financial Protection Bureau (CFPB)	Must make a “good faith effort” to establish “live contact” with borrowers within 36 days of delinquency.	12 C.F.R. § 1024.39(a).	ABA/CBA Comments at 11, 13.  Mortgage Bankers Assn. Reply Comments at 9.
Interagency Task Force	Recommended that “technology-enabled communication” and text messages be used to contact borrowers.	Interagency Task Force Recommendations at 1, 9-11.	Student Loan Servicing Alliance Reply Comments at 6.
Office of the Comptroller of the Currency (OCC)	Approved bank compliance plans, which include procedures for telephone outreach to delinquent borrowers.	Foreclosure Prevention: Improving Contact with Borrowers (2007).	ABA/CBA Comments at 8, 11, 17.
State of California	Must “attempt to contact” the borrower by telephone at least three times.	Cal. Civ. Code § 2923.5 (a)(1)(A), (a)(2), (e)(2)(A).	Mortgage Bankers Assn. Reply Comments at 10.
State of Nevada	Must “attempt to contact” the borrower by telephone at least three times.	Nev. Rev. Stat. § 107.510(1)(b), (2); (5)(b).	Mortgage Bankers Assn. Reply Comments at 10.
Washington State	Must “attempt to contact” the borrower by telephone at least three times.	Wash. Rev. Code § 61.24.031 (1)(a)(i-ii), (1)(b), (5)(b)(i).	Mortgage Bankers Assn. reply Comments at 10.
Rural Housing Service (Dept. of Agriculture)	Must attempt to make verbal or written contact before 20 days past due.	HB-1-3555 SFH Guaranteed Loan Program Technical Handbook, Ch. 18.	Consumer Mortgage Coalition Comments at 7-8.  Mortgage Bankers Assn. Reply Comments at 9.
Veterans Administration (VA)	Must attempt to establish live contact by the 20th day of delinquency.	38 C.F.R. § 36.4278(g)(1)(ii).	ABA/CBA Comments at 11, 16.  Consumer Mortgage Coalition Comments at 6-7.  Mortgage Bankers Assn. Reply Comments at 9.